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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203199
Party	Defendant Life Empowerment Institute
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	03/02/2012
Attachments	Motion for Leave to File First Amended Answer.pdf (3 pages)(120826 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Kona University, Inc.)	Opposition No. 91203199
Opposer,)	Application Serial No. 85008965
v.)	Mark:



Life Empowerment Institute)	
Applicant.)	

MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER

In accordance with Federal Rule of Civil Procedure (FRCP) 15(b), counsel for Applicant, Life Empowerment Institute, has attempted to gain consent from Opposer's counsel to file an amended complaint, as the 21 day period to amend said Answer by right, as granted by FRCP 15(a), has expired. Because attempts to confer with Opposer's counsel have been unsuccessful, Applicant now requests leave to file Applicant's First Amended Answer to this Opposition.

I. STATEMENT OF FACTS

On December 30, 2011, Opposer filed this action, Opposition No. 91203199, against Applicant's Federal Trademark Application, Serial No. 85008965. At that time, Applicant was not represented by counsel. Unfamiliar with the rules and procedures of adversary proceedings, on February 6, 2012, Applicant filed a response to Opposer's "Statement of the Case." Though the Interlocutory Attorney at the Trademark Trial and Appeal Board (TTAB) properly construed this response as an Answer, the response did not comport with Trademark regulation 2.119, nor did it adequately address the legal issues raised in the Opposer's statement.

Applicant retained current counsel on February 28, 2012, one day after the 21 day period to amend the Answer had ended under FRCP 15(a). Applicant's counsel has drafted an Answer which comports

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with the TTBB rules and regulations and addresses the legal issues raised in Opposer's statement. Applicant now seeks to file this Amended Answer in order to preserve all available defenses and rights in this matter.

II. ARGUMENT

a. The Court Should Freely Grant Leave To Amend

FRCP 15(a) states that "leave [to amend] shall be freely given when justice so requires." Though leave to amend is firmly within the discretion of the Board, "(I)n exercising this discretion, a court must be guided by the underlying purpose of Rule 15 — to facilitate decision on the merits, rather than on the pleadings or technicalities." *Roth v. Garcia Marquez*, 942 F.2d 617, 628 (9th Cir. 1991), quoting *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Furthermore, "this policy is to be applied with extreme liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)

In this case, justice requires that the Board grant leave to amend so that Applicant is fully able present defenses, and that the Board, when deciding this case, will have a more complete record on which to rule. This furthers the goal of justice and efficiency.

b. Amendment Is Appropriate Because Applicant Has Recently Retained Counsel

Applicant's response to this Opposition was filed while Applicant was *pro se*. Now that Applicant is represented by counsel, justice demands that counsel be permitted to amend Applicant's Answer to comport with the TTAB rules and procedures in order to preserve Applicant's rights and defenses.

c. Opposer Will Not Be Unfairly Prejudiced By Granting Leave to Amend the Answer

Reasons to deny leave to amend a pleading under FRCP 15(b) include, "undue delay, bad faith or dilatory motive on the part of the movant." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Here, there has been no such conduct or motives, as counsel was retained only two days before this motion is filed, Applicant is still within the 40 day period originally allotted for filing an Answer, discovery has not begun, and Opposer has filed no other motions.

III. CONCLUSION

For the foregoing reasons, Applicant hereby requests the Trademark Trial and Appeal Board grant this motion to file an Amended Answer to this Opposition, No. 91203199.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the Amended Answer to Notice of Opposition were deposited First Class mail with the United States Postal Service on March 2, 2012, to Counsel for Opposer at the following address:

William G. Meyer, III, Esq.
Bryan Harada, Esq.
Dwyer Schraff Meyer Grant & Green
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1800 Pioneer Plaza
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By: _____

Adrienne H. Haddad